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APR 05 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Giuseppe Faita, et al.
Serial No.: ~~11/659,637~~ 10/583 023
Filed: February 5, 2007
For: MEMBRANE ... AIR

Hedman and Costigan
1185 Avenue of the Americas
New York, NY 10036
April 5, 2007

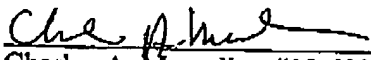
REFUND REQUEST

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants in the above application request the Patent Office to refund to the undersigned the \$2,500 fee for filing the application and petition fee filed with the above application on February 5, 2007 in view of the decision of March 29, 2007 filed herewith.

Respectfully submitted,
Hedman and Costigan


Charles A. Muserlian #19,683
Attorney for Applicants
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CAM:mlp
Enclosures



29 MAR 2007

UNITED STATES PATENT AND TRADEMARK OFFICE

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CHARLES A. MUSERLIAN

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In re Application of
FAITA et al.
Application No.: 10/583,023
PCT No.: PCT/EP04/014420
Int. Filing Date: 17 December 2004
Priority Date: 19 December 2003
Attorney Docket No.: 19214-016US1
For: MEMBRANE FUELL CELL COUNTERCURRENT:
FED WITH NON-HUMIDIFIED AIR

DECISION on
MERGING APPLICATION FILES

The above-identified application is before the PCT Legal Office for matters arising under 35 U.S.C. 371.

BACKGROUND

On 17 December 2004, applicant filed international application No. PCT/EP04/14420, which claimed priority of an earlier international application filed 19 December 2003 and designating the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 30 June 2005. The deadline for entering the U.S. national stage to 30 months or as of midnight on 19 June 2006.

On 15 June 2006, applicant filed, through the law firm of Fish & Richardson, a transmittal letter for entry into the national stage in the United States (Form PTO-1390) which was accompanied by, *inter alia*, the requisite basic national fee as required by 35 U.S.C. 371(c)(1). The submission, identifying PCT/EP04/14420, was assigned U.S. application number: 10/583,023. An oath or declaration was not filed with the national stage entry.

On 5 February 2007, applicant, through the law firm of Hedman and Costigan, filed another Transmittal Letter referencing PCT/EP04/14420 and requesting entry into the national stage in the United States. This communication was accompanied by, *inter alia*, a copy of the international application PCT/EP04/14420 and a petition to revive an unintentionally abandoned application under 37 CFR 1.137(b). An unexecuted declaration was also filed.

Application No.: 10/583,023

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DISCUSSION

As is evident from the above recited facts, applicant submitted papers to enter the national stage for the same international application on 15 June 2006 and on 05 February 2007. The end result for an international application designating the United States of America is a single U.S. national stage application¹. Therefore, assigning a second U.S. application number arising from PCT/EP04/14420 is improper.

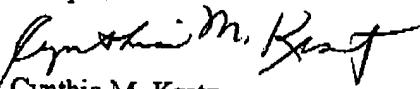
Applicant's petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is considered MOOT. The papers filed on 05 February 2007 will be merged with application no. 10/583,023. All fees paid on 05 February 2007 will be refunded to applicant's credit card.

Applicant is advised to use U.S. application number: 10/583,023 as the national stage application of PCT/EP04/14420.

CONCLUSION

Applicant's petition to revive an unintentionally abandoned application under 37 CFR 1.137(b) is MOOT. The papers filed on 05 February 2007 will be merged with application no. 10/583,023.

The application will be forwarded to the United States Designated/Elected Office for further processing, including issuance of a Notification of Missing Requirements indicating that an oath or declaration, in compliance with 37 CFR 1.497(a) & (b) and executed by the inventors, is required.


Cynthia M. Kratz
Attorney/Advisor

¹ 35 U.S.C. 363 states:

An international application designating the United States shall have the effect, from its international filing date under article 11 of the treaty, of a national application for patent regularly filed in the Patent and Trademark Office except as otherwise provided in 102(e) of this title. (emphasis added)

Further, 35 U.S.C. 371(b) states:

(b) Subject to subsection (f) of this section, the national stage shall commence with the expiration of the applicable time limit under article 22(1) or (2), or under article 39(1)(a) of the treaty. (emphasis added)

The language of 35 U.S.C. 363 and 371 refers to the national stage of the PCT in the singular only, and thus only one (1) national stage application in the U.S. may develop from an international application.

Application No.: 10/583,023

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PCT Legal Office

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